In the Supreme Court of the United States.

OCTOBER TERM, 1920.

THE UNITED STATES OF AMERICA, *plaintiff in error,*
v.
MARGIE L. HIGHSMITH.

No. 148.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF FOR THE UNITED STATES.

The writ of error in this case seeks to review a judgment of the Circuit Court of Appeals affirming a judgment of the District Court in a proceeding instituted by the government to condemn land. The specific complaint is that the court added to the damages awarded by the jury a sum equivalent to 6% per annum on the amount of damages from the date the land was taken to the date when the verdict of the jury was rendered.

STATEMENT.

January 18, 1915, in the District Court of the United States for New Mexico, the United States presented a petition alleging the appropriation

18836—20

April 19, 1912, of a real estate for use as a reservoir site under Act of Congress approved June 17, 1902, c. 1093, 32 Stat. 388, and praying for fixing of compensation to which defendant in error, its owner, was entitled and for condemnation. R. 3. The award by commissioners of appraisal of compensation to defendant in error recited that the sum reported did not include interest thereon from the date of appropriation. On appeal the case was tried again by jury, whose verdict was returned January 12, 1918.

By agreement the jurors were instructed that whether or not defendant was entitled to interest on the award was a matter of law for the determination of the court and were handed a form of verdict, reading:

> We, the jury in the above entitled cause, upon our oaths assess the damages of Margie L. Highsmith, for 314.92 acres of land at the sum of ——— with interest at the rate of 6% per annum from April 19, 1912. R. 3–4.

It appears further from an agreed statement (upon which alone the suit was heard in the Circuit Court of Appeals and is brought here) that interest from April 19, 1912, the date of appropriation, having been theretofore considered and held by the court to be proper and allowable "as a matter of law," the form of verdict so provided, it being agreed that separate order requiring deposit of interest should be entered in order to

allow writ of error on that point alone. In connection with the form of verdict the jurors were instructed to assess compensation at what in their judgment was the value of the land on April 19, 1912, and not to add anything thereto by way of interest or otherwise for the time between the date of appropriation and date of verdict. R. 4.

January 30, 1918, final judgment was entered, requiring deposit of the amount of the verdict. Afterwards, but on the same day, a separate order directing payment of interest thereon amounting to $5,625.10 from April 19, 1912, was entered, to which latter order the United States excepted (R. 4–5) and prosecuted writ of error from the Circuit Court of Appeals, which on March 25, 1919, affirmed the judgment below. R. 11. To review this action writ of error from this court has been sued out. The opinion of the Circuit Court of Appeals (R. 10–11) is reported in 257 Fed. 401.

It was agreed also that although the land was appropriated April 19, 1912, and used thereafter by the United States, no court order formally placing them in possession thereof was entered except that contained in final judgment entered January 30, 1918.

Aside from immaterial particulars made plain above, the instant case is in all respects like No. 147, *United States* v. *Rogers*. Mrs. Highsmith's property was included in the petition of January

18, 1915, along with other tracts whose owners (defendants in error in No. 147) did not by appeal seek jury trial as did defendant in error in this case.

In this, as in the other suit, it does not appear from the record that any evidence was offered to show what were the actual damages, if any, suffered because of deprivation of possession for the period antedating judgment and, as stated, the jurors here were instructed not to add anything to the award by way of interest or *otherwise* on account of time intervening between appropriation and verdict. There is thus presented the question whether interest as such for the period specified is allowable as matter of law and *as a legal right*.

SPECIFICATION OF ERRORS.

Errors assigned here (R. 12–13), in substance those relied on in No. 147 and presenting practically identical questions, are condensed as follows:

(1) In proceedings for condemnation brought by the United States the interest claimed (at a fixed rate) for any period prior to final judgment or prior to a court order placing them in possession is not properly and legally allowable by the court as of right or as part of the just compensation guaranteed by the Constitution.

(2) What additional compensation, if any, should be allowed as an element of damages on ac-

count of use and occupation enjoyed prior to judgment or payment of compensation awarded for the land is matter for consideration in the light of prevailing conditions by a jury.

(3) Since in defendant's pleadings there was no demand for interest or additional compensation as damages on account of the use of the premises prior to legal condemnation or payment of compensation there was error in affirming the judgment of the district court in awarding interest as aforesaid.

Inasmuch as the issues on this record are substantially like those presented in No. 147 and as the decision there will control, an extended brief has not been printed and the government respectfully offers the printed argument and brief already presented in No. 147 as applicable and available here.

CONCLUSION.

For the reasons set forth in our brief in No. 147, the judgment of the Circuit Court of Appeals should be reversed.

Respectfully submitted.

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NOVEMBER, 1920.

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